

[Order entered 12-18-08]

IN THE DISTRICT COURT OF IOWA FOR BLACK HAWK COUNTY

STATE OF IOWA, ex rel.)	
THOMAS J. MILLER (99AG25112),)	
ATTORNEY GENERAL OF IOWA)	EQUITY NO. EQCV106329
)	
Plaintiff,)	
)	CONSENT JUDGMENT
vs.)	
)	
JERRY FRATZKE, Individually)	
And d/b/a PRONTO MARKET,)	
)	
Defendant.)	

This Court, recognizing that the State of Iowa ("Plaintiff"), by Stephen E. Reno, Assistant Attorney General, and Defendant Jerry Fratzke, individually and doing business as Pronto Market ("Defendant"), have consented to entry of this judgment pursuant to Iowa R. Civ. P. 1.958, finds as follows:

1. This Court has jurisdiction over the parties and the subject matter of this litigation.
2. Plaintiff commenced this action by filing suit on August 13, 2008, in this Court, alleging violations of the Iowa Consumer Fraud Act, Iowa Code §714.16, and seeking equitable relief, injunctive relief, civil penalties and recovery of costs, including court costs.
3. Plaintiff is the State of Iowa, ex rel. Thomas J. Miller, the duly elected Attorney General of Iowa.
4. At all times relevant hereto, Defendant was doing business within the State of Iowa as the owner and operator of Pronto Markets located in Sumner and Fairbank, Iowa, as well as other locations therein.

5. Plaintiff stated in its petition, among other allegations, that Defendant had blended ethanol fuel dumped into his underground storage tanks ("UST"), at his Fairbank, Iowa location, including the unleaded regular UST at said location.
6. Plaintiff asserted that Defendant's conduct constituted unfair, deceptive, fraudulent, omissive and/or otherwise unlawful practices, in violation of Iowa Code §714.16(2)(a), which included, but was not limited to, placing blended fuel in the Fairbank, Iowa Pronto Market's unleaded regular UST.
7. The Plaintiff and Defendant do not agree as to the validity, scope and magnitude of all allegations contained in Plaintiff's Petition, including, but not limited to economic damages. In the interest of avoiding further delay in litigation and additional expense, the parties wish to resolve and settle this matter under the terms set forth herein.
8. Defendant makes no admissions as to the allegations contained in Plaintiff's Petition.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that:

- A. Defendant is permanently enjoined from selling unleaded regular fuel containing ethanol at any of his convenience store/gasoline station locations within the State of Iowa.
- B. The Weights and Measures Bureau of the Iowa Department of Agriculture and Land Stewardship ("Bureau") has and shall continue have the authority to conduct inspections and testing of all fuels at any and all convenience store/gasoline station location(s) owned by the Defendant.

- C. Should any inspection or testing by the Bureau reveal that Defendant's unleaded regular UST's at any of his convenience store/gasoline station locations contain ethanol, Plaintiff may seek any remedy allowed by law.
- D. Defendant shall pay the sum of fifteen thousand dollars (\$15,000.00) as payment in full of any civil penalty asserted by the Plaintiff and any other amounts to which Plaintiff may claim an entitlement. This amount shall be paid, in full, to the Consumer Education Fund of the Iowa Department of Justice, Iowa Attorney General's Office. Payment shall be mailed to: Iowa Department of Justice, Attn: Ms. Karen Redmond, Hoover State Office Building-Second Floor, Des Moines, Iowa 50319. The civil penalty payment shall be made within seven (7) days of the filing of this Consent Judgment in the office of the Black Hawk County Clerk of District Court.
- E. By executing this Consent Judgment, Defendant expressly agrees to all terms and conditions set forth herein and further states that he has been informed that violations hereof may constitute grounds for contempt proceeding in this Court.
- F. Defendant shall pay all court costs associated with this action.
- G. Plaintiff waives and releases any attorney and/or investigative fees to which it may be entitled under the Consumer Fraud Act, up to and including the filing of this Consent Judgment.
- H. Defendant shall cooperate with the office of the Attorney General in responding to any request for a refund by Fairbank Pronto Market consumers based on documented, unleaded regular gasoline sales that occurred between

October 1, 2007 and June 17, 2008. Any such request may be made to the office of the Attorney General within sixty (60) days of the filing of this Consent Judgment.

- I. Any intentional failure to comply with any provision of this Consent Judgment may subject Defendant to subsequent proceeding in this action and the imposition of additional penalties not to exceed five thousand dollars (\$5,000.00) for each day of such intentional noncompliance.
- J. This Court reserves jurisdiction over this action in order to take further action deemed necessary to enforce the judgment and to award Plaintiff judgment for any reasonable costs, including attorney fees, it incurs in the event of noncompliance by the Defendant.

IT IS SO ORDERED THIS _____ DAY OF _____, 2008.

[12-18-08]

[Margaret L. Lingreen]

Judge, First Judicial District of Iowa

APPROVED AS TO FORM AND CONTENT:

State of Iowa, ex rel. Thomas J. Miller Defendant:

By: _____
Stephen E. Reno Jerry L. Fratzke, Individually and d/b/a
Pronto Market

Charles F. Becker, Attorney for Defendant

Copies to:

Stephen E. Reno
Assistant Attorney General
Lucas State Office Building
Ground Floor – Room 018
Des Moines, Iowa 50319

Charles F. Becker, Esquire
Belin Lamson McCormick Zumbach Flynn,
A Professional Corporation
The Financial Center
666 Walnut, Suite 2000
Des Moines, Iowa 50309

R:/20/Pronto Market Consent Judgment 112008.doc